THE CASE OF THE FLORIDA,

ILLUSTRATED BY

PRECEDENTS FROM BRITISH HISTORY.

BY

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[The following article appeared originally, as a communication, in the *Boston Daily Advertiser* of November 29th, 1864. Its authorship having been recognized and acknowledged, the Young Men's Republican Union, with Mr. Sumner's permission, now present "The Case of the Florida" to the public in a corrected and convenient form for future reference.]

If we may judge from recent English newspapers, there is to be another cry against us on account of the Florida, not unlike that which was excited on account of the Trent. One paper says the seizure was "most flagrantly lawless." Another says that "the precedent will establish a claim to the right to pursue and destroy every such vessel, whatever may be the port in which she may seek shelter or supplies." Another says that "the outrage cannot be permitted to pass unnoticed by other powers." And still another says that "events such as these will speedily force European nations to interfere in the American difficulty for their own security." Such are specimens of British criticism, made before the facts in the case have been ascertained in any authentic form, and before our government has had any opportunity to declare itself on the matter.

The same swiftness occurred in the case of the Trent. The parallel will be complete, if Lord Russell sends us a letter of complaint.

As in the instance of the Trent, there is the same indifference to *historic precedents*. I do not refer to cases decided in prize courts, where the question was one of *strict law*, which was al-

lowed to prevail—as where Sir William Scott decreed restitution of a vessel captured by a British privateer stationed among the mud islands at the mouth of the River Mississippi, and within the neutral territory of the United States. I refer to another class of authorities not to be found in judicial decisions, but in the History of Great Britain. And, as in the instance of the Trent, it appeared that this power had for several generations, under a pretended claim, entered on board foreign ships and forcibly dragged away persons from the protection of their flag—thus doing on a large scale what was done by Commodore Wilkes on a very small scale; so it will appear that this same power, which is now swift to condemn the act of Captain Collins, has for many generations been in the habit of seizing or destroying vessels in neutral waters.

Judicial decisions exhibit the strict law obligatory on courts. *Historic precedents* exhibit the practice of nations, where strict law is often modified by considerations of necessity or policy. The first, as a general rule, concern private rights; the second, as a general rule, concern public rights. The first are questions for the court; the second are questions for executive deliberation, and for diplomacy. It is needless to add that the case of the Florida is not a case of private rights. It is an historic incident, destined hereafter to be a precedent, which will be determined by the executive, and not by the judiciary. If the Florida was an ordinary private ship, claimed by private individuals, it would naturally fall under the cognizance of a prize court. But it is claimed as a public ship, which, as is well known, is not subject to the jurisdiction of a prize court. Or, assuming its private character by reason of its piratical origin, there are questions involved which must ultimately come under the cognizance of the Executive, and which belong to the history of the country.

Of course, the general principle of international law, applicable to such an incident, is beyond question. It may be found in the authoritative words of the Dutch publicist, Bynkershock, when he says, "Certainly it is by no means lawful to attack or take an enemy in the port of a neutral, who is in amity with both parties." *(Bynk. Questiones J. P. lib. I. cap.* 8.) Chancellor Kent, a great authority, enforces the same principle when

he says: "It is not lawful to make neutral territory the scene of hostility, or to attack an enemy while within it." (*Commentaries, vol. I. p.* 117.) General Halleck, in his excellent work on International Law, says: "Hostilities cannot be lawfully exercised within the territorial jurisdiction of the neutral State which is the common friend of both parties." (*Halleck, International Law, p.* 520.) And he follows this compendious statement with the remark, that "the Government of the United States has invariably claimed the absolute inviolability of neutral territory." (*Ibid., p.* 522.) As early as 1793 our government gave its adhesion to this principle in a case where Great Britain and France were the hostile parties. The British merchant ship Grange was captured in Delaware Bay by a French frigate, and brought into Philadelphia, to which port she was bound. Mr. Jefferson, in a gossiping letter to Mr. Munroe, under date of May 5, 1793, says: "Upon her coming into sight thousands and thousands of the yeomanry of the city crowded and covered the wharves. Never before was such a crowd seen there, and when the British colors were seen reversed and the French flag flying above them, they burst into peals of exultation." (*Jefferson's Works, vol.* 3, *p.* 348.) The British Minister at once addressed himself to our government, and demanded restitution of the captured vessel, then within our jurisdiction. The French Minister insisted that Delaware Bay was an open sea, so that the original capture was lawful. *But the ship was restored.* Washington was at the time President, and Jefferson Secretary of State. It does not appear that there was any appearance in the prize court with reference to the Grange. It was a matter of diplomacy, as will be seen by a formal letter of the Secretary of State addressed to the French Minister, in which he says that he is "charged by the President of the United States to express his expectation, and at the same time his confidence, that you will be pleased to take immediate and effectual measures for having the ship Grange and her cargo restored to the British owners, and the persons taken on board her set at liberty." (*Jefferson's Works, vol.* 3, *p.* 561.) The general principle illustrated by this striking case has been maintained by our government ever since. If any reader is curious to see an elaborate vindication of it, I

beg to refer him to a very animated article in the Boston Gazette for 1814, transferred to Nile's Register, (vol. 6, pp. 347, 352,) where the inviolability of neutral territory is upheld especially against the open pretensions of Great Britain.

This general principle may seem at first view conclusive with regard to the Florida. If the Florida, now lying within the jurisdiction of the United States, were an ordinary private ship, cognizable in a prize court or if it were still within the jurisdiction of Brazil, it might be so. But it remains to be seen whether there are not decisive considerations, *distinguishing this case from every other*, which will justify our Government, while recognizing the violation of Brazilian territory, and making all proper apologies, *at least in declining any restitution of the ship*. On this point it is not necessary to express any opinion. I began by an allusion to the reckless judgments of leading British journals, tending to excite a cry against our country; and my present object will be accomplished, if I exhibit those *historic precedents*, which must close the British mouth whenever it opens to condemn a capture like that of the Florida.

(1.) It was in the reign of Queen Elizabeth that England began to contest the supremacy of the seas; and it was in this same reign that this domineering power began those pretensions under which neutral rights of all kinds were set at naught. As early as 1565, Hawkins, fresh from a slave-trading voyage in the ship "Jesus," fired at a Spanish ship in the harbor of Plymouth, and forced her to lower her flag. The Spanish Ambassador said indignantly to Elizabeth, "Your mariners rob "my master's subjects at sea; they plunder our people in the "streets of your towns; *they attack our vessels in your very "harbors*. I entreat your Majesty to punish this last outrage "at Plymouth, and to preserve the peace between the two na- "tions." *(Froude's History of England, vol. 7, p. 484.)* Elizabeth gave a smooth answer; and this was all.

(2.) Not long afterwards Admiral Drake entered the harbor of Cadiz, where he scattered, sunk and burnt an immense fleet of Spanish transports, and then did the same thing in the harbor of Lisbon. There were apologies on the part of Elizabeth. Burleigh wrote a crafty letter. The Admiral was dismissed; but this

was all. (*Motley's History of Netherlands, vol.* 2, *pp.* 284–5.) Among the ships seized at Lisbon were no less than sixty belonging to the Hanse Towns. *These towns vainly demanded their restitution.* Philip of Spain, who was at that time sovereign of Portugal, was equally unsuccessful, although, by way of retaliation, he drove from Lisbon the factors of British merchants there. (*De Cussy, Phases et Causes Celebres, tom.* 2, *p.* 60.) Such are some of the earliest historic precedents.

(3.) In similar defiance of unquestionable right, the Dutch East India fleet, in 1665, which had put into Bergen in Norway, was attacked by the English in this neutral port. On this outrage Vattel remarks: "But the government of Bergen fired "on the assailants, and the Court of Denmark complained per- "haps too faintly of an enterprise so injurious to its rights and "dignity." (*Vattel, book* 3, *chap.* 7, § 138.)

(4.) Throughout the seventeenth century there are numerous incidents which illustrate the pretensions of Great Britain; and so also in the next century. Emerigon, the famous French authority on the law of insurance, mentions one which deserves notice. In 1757, a French barque, *La Victoire*, chased by a British privateer, found refuge in the neutral waters of Majorca, where she anchored within pistol shot of the shore. The British privateer seized the barque, notwithstanding three shots fired from the castle. A few days later the prize was re-captured by a French privateer. The original owners of the barque claimed her on the ground that her capture was null; but the court of prizes awarded one-third to the recaptor. (*Emerigon, Traité des Assurances, cap.* 12, § 23. *See, also, Azuni, Maritime Law, vol.* 2, *p.* 278.) The learned author fails to record any reparation by Great Britain.

As we advance to later times the historic precedents multiply. I pass over a considerable period, not without examples, and come at once to those which occurred in the protracted war against the French Revolution.

(5.) War had hardly begun, when, in 1793, the port of Genoa was the scene of an incident differing from that in Bahia only in its very aggravating circumstances, and in the bloodshed which ensued. The French frigate *La Modeste* was quietly at anchor in this neutral harbor, when a British ship of the line

came alongside. Suddenly the British commander summone the Frenchman to surrender. On his refusal, the frigate was boarded and three hundred of the unarmed crew were massacred. The frigate was carried to England. Such is the account given by a French author, who complains bitterly that the British Government did nothing to punish the outrage. The Genoese Government was powerless; and the French Convention, in a decree marked by great moderation, proceeded to release it from all responsibility; although at a later day it appears to have paid two millions of francs as an indemnity. (*De Cussy, Phases et Causes Celebres du Droit des Glen, tom.* 2, *p.* 70.) The reader, who is curious in dates, will not fail to observe, that it was in the very year when the neutrality of Genoa was thus set at defiance, that the British Minister in the United States claimed the surrender of a ship seized by a French frigate in defiance of our neutrality. Such are the inconsistencies of human conduct. A British ship captured by France in neutral waters was surrendered at the demand of Great Britain. A French ship captured by Great Britain in neutral waters was hurried off by the captor as prize of war.

(6.) The same author who has described the outrage in the harbor of Genoa, adds that Admiral Nelson shortly afterwards seized another French vessel in full view of the Genoese batteries. (*Ibid., tom.* 2, *p.* 71.)

(7.) Another instance is recorded, where Admiral Nelson, in 1798, entered the neutral port of Leghorn, and seized a fleet of Genoese ships richly loaded. The author who records this outrage, arraigns "the high personage who, without respect for the independence and dignity of a friendly and neutral nation, assumed the moral responsibility of such a transaction." (*Ibid., tom.* 2, *p.* 70.)

(8.) The same lawlessness which governed British commanders in Leghorn and Genoa appeared also this side of the Atlantic. In August, 1795, an audacious attempt was made by the British ship of war Africa to seize the French Minister, M. Fauchet, when on his way from New York to Newport, on board the sloop Peggy, within the waters of the United States. The sloop was boarded at the entrance of Newport harbor, and within two miles of the light-house, and the trunks of the

Minister were overhauled; but he had already left at an intermediate port, so that the trespassers were disappointed. M. Fauchet, in a communication to his successor, M. Adet, says: "I shall express to you but one affecting sentiment, which is, that in a free State, with a government in which England has just acquired a friend, there is no safety for myself or my papers; for, in a word, *as it was from a public packet-boat in a neutral port* that I was to have been carried off, there is no reason why I should not be taken on the highway, or in an inn, if it could be done with impunity." Our government vainly endeavored to obtain reparation from Great Britain for this outrage, while France, on her part, mentioned the "impunity" of its authors among her causes of complaint against us. It is only recently that the facts of this remarkable case have appeared in a document printed by order of the Senate. *(Executive Doct. No.* 4, 37*th Congress*, 3*d Session.)* They help swell the testimony with regard to Great Britain.

(9.) Taking these instances in the order of time, we come next to outrages of a similar character on the coast of Norway. The British frigate Squirrel, on entering the Norwegian port of Oster-Risoer, in 1801, then belonging to Denmark, seized a Swedish ship, and put its pilot in irons. Then coming to anchor, it deliberately captured three other Swedish vessels, and sending on shore, it kidnapped several pilots. A few weeks later another British man-of-war, the cutter Achilles, entered the Norwegian port of Egvang, where it seized a French prize at anchor, while its crew fired upon a boat having on board peaceable inhabitants. The Danish Government promptly demanded reparation for these accumulated outrages, and especially the restitution of the vessels. The British Minister, Lord Hawkesbury, at once declared that the guilty individuals should receive the strongest marks of condemnation from his Government; but *that, with regard to the restitution of the vessels, it was impossible for him in the actual circumstances of the two countries to enter into any explanation;* that, if the present misunderstanding should be amicably adjusted, "these cases would be naturally carried, without loss of time, *before the regular and impartial tribunals*, established for the decision of such causes, according to principles of justice and the law of

nations." The Danish Minister at once replied that his Sovereign would never consent, that the open violation of his ports and his territory should become the subject of deliberation and decision in any tribunal; that his territorial rights were assured, and he would not abandon them. Lord Hawkesbury was moved, in reply, to disapprove the conduct of the British officers, and *to order the restitution of the Swedish vessels captured in the port of Oster-Risoer.* At the very moment of this "incomplete reparation," as it has been called, Great Britain was preparing her first expedition against Copenhagen. (*De Cussy, Phases et Causes Celebres, tom.* 2, *p.* 223.)

(10.) The same French author, who, in his ardor for neutral rights, has exposed the conduct of Great Britain, mentions the instance of an English frigate in 1803, which, after capturing a Swedish vessel in a Norwegian port, entered the neutral port of Bergen, where her commander attempted to seize a Dutch vessel and two French privateers. These three vessels were saved by crawling, with the permission of the Governor, under the guns of the fortress; but the attempt was a violation of the neutral waters of Bergen, which passed without any reparation (*De Cussy, tom.* 2, *p.* 238.)

(11.) M. de Cussy also mentions that, during this same year, a British man-of-war insulted a French ship in the neutral port of Lisbon. (*Ibid., p.* 240.)

(12.) The next instance was again on this side of the Atlantic, and in the neutral waters of our own coast. The French ship-of-the-line, L'Imperieux, separated in a storm from the fleet to which she belonged, and much disabled, was discovered, September, 1806, by several British men-of-war off Cape Henry. The French ship turned her head to the land, and was actually aground before the British ships came within cannon shot. But, though in this disabled condition, and on the very shores of the United States, she received a British broadside. The French commander protested vainly that he was on neutral territory. His crew were taken prisoners, and his ship was burnt. This act was a violation of the law of nations, doubly noticeable, as the immunity of our coast "within cannon shot" had been expressly recognized in the Treaty of 1794 between Great Britain and the United States. *As the ship was burned,*

there could be no question of its restitution. But it does not appear that there was any reparation of any kind—not even an apology. *(De Cussy, Phases et Causes Celebres, tom. 2, p. 81)*

(13.) The outrage upon the frigate Chesapeake properly belongs to this list of illustrative instances, for it was a bare-faced and most insulting violation of territorial jurisdiction. This was in June, 1807, while the United States were at peace with all the world. The Chesapeake having proceeded to sea, was followed by the British frigate Leopard, lying at Hampton Roads, which, after ranging alongside of her, commenced a heavy fire, until the commander of the Chesapeake felt it his duty to strike his colors and to inform the British commander that the Chesapeake was his prize. It is needless to mention the details of this unparalleled enormity or the mingled anger and humiliation which ensued in the country, as they became known. A demand for reparation was made at once; but it was only after four years of negotiation that the terms of adjustment were mutually accepted. *There was no ship to restore;* but the men who had been forcibly taken from the Chesapeake were, "as far as circumstances would admit," returned to that frigate, then lying in the harbor of Boston. *(American State Papers, Foreign Relations, vol. 3, pp. 499, 500.)*

(14.) At the same time that these outrages were perpetrated on our coast, another on a larger scale was planned and executed in the Baltic. Denmark was at the time "scrupulously neutral;" but the British Government feared that its fleet, lying at Copenhagen, might in some way be appropriated by Napoleon, whose continental supremacy had recently culminated at the peace of Tilsit. It was determined to seize this fleet, and a naval expedition of corresponding force was directed against Copenhagen. The Danes made a brave resistance; but at last, on the 7th of September, 1807, they were compelled to capitulate. The Danish fleet was surrendered to the British Admiral. *(Thiers, Histoire du Consulat et de l'Empire, tom. 8, liv. 28.)*

(15.) Then came the remarkable instance of the American frigate Essex, under Commodore Porter, captured by a superior British force in the neutral waters of Valparaiso. The Essex had made a very successful cruise, and became a terror to Brit-

ish navigation. It was important to stop her victories. The newspapers of the time assert that a British Admiralty order was issued, "commanding the officers of British ships in the South Seas *not to respect any port as neutral where the Essex should be found.*" (*Niles's Register*, *vol.* 6, *p.* 347.) It is certain that the British Commander acted in the spirit of this order. With two frigates, the Phœbe and the Cherub, in April, 1814, he opened fire upon the Essex, then at anchor, according to her log-book, "in nine and a half fathoms water, and within half-pistol shot of the shore." Commodore Porter, after a desperate battle of more than two hours and a half, was compelled to surrender. The country was filled with admiration of his gallantry and indignation at what was called "the glaring defiance of the clearest principle of national law." It was said that, though the country had lost a ship, it had lost nothing else. But here the matter ended. *The ship was never restored;* nor does it appear to have been the subject of reclamation, either by our Government upon Spain, or by Spain upon Great Britain. The President's message, at the opening of the next Congress, while commending the gallantry of Commodore Porter, does not even allude to the violation of international law in his capture. But it will be remarked, that at this time the South American colonies were beginning to be convulsed by that long revolutionary war which ended in their independence, so that there was a practical difficulty in obtaining any remedy for this outrage. We could not apply directly to England, and neither Spain nor Chili was in a condition to apply to. Silence on our part was the best policy. But the act cannot be forgotten among the precedents of British history.

(16.) Then came the instance of the General Armstrong, an American privateer, destroyed by a British squadron in the neutral waters of Fayal, in September, 1814. There is a dispute as to certain facts in this case. On the British side it is said that the privateer fired first and killed several men. But it is clear that the privateer was pursued and attacked under the very guns of the Portuguese fortress, and, after being abandoned by her crew, was burned by the British. As war at that time existed between Great Britain and the United States, our Government was compelled to resort for reparation to Portugal,

whose neutral territory had been violated. After a protracted negotiation for more than a generation, the question was submitted to the arbitration of Louis Napoleon, at the time President of the French Republic, who decided that nothing was due from Portugal. This decision was put on the ground of exceptional circumstances, and among other things, that the American commander "had not applied from the beginning for "the intervention of the neutral sovereign, and that, by having "recourse to arms, to repel an unjust aggression of which he "pretended to be the object, he had himself failed to respect the "neutrality of the territory of the foreign sovereign, and had "thereby released that sovereign from the obligation under "which he was to afford protection by any other means than "that of a pacific intervention." *(Wheaton, Elements of International Law, p.* 721. *Lawrence's note; De Cussy, tom.* 2, *p.* 8.) *In this case the ship was destroyed, so that there was no question of restitution.* But Great Britain made no reparation of any kind.

(17.) Such are some of the seizures actually made by Great Britain, in defiance of neutral rights, during the wars against the French Revolution and against us. There is another incident, belonging to the latter period, which, though not a consummated seizure, is in the nature of testimony, especially as it concerns the very port of Bahia, where the Florida was seized. Commodore Bainbridge, of the Navy of the United States, after his capture of the British frigate Java, left Captain Lawrence in the Hornet to cruise off the port of Bahia, instructing him as follows: "You will cruise off here as long as in your judgment you may deem necessary; but be on your guard against the arrival of the Montague, 74; *and I advise you not to rely too much on the protection of the neutral port of Bahia against the British Admiral's influence to capture you even in port." (Harris' Life of Bainbridge.)* Captain Lawrence followed these instructions, and, though driven by the Montague into the port, at once took advantage of the night to escape to sea, and thus to elude British violence in neutral waters. The Hornet was not "gobbled up," as the capture of the Peacock shortly afterwards amply attests—but it is evident that the will was not wanting.

(18.) The long interval of peace which ensued after the outrages last mentioned, caused a lull in British pretensions—destined, however, to be awakened by the blast of war. In 1837 Canada was disturbed by a rebellion, which was followed soon by the invasion of our territorial jurisdiction at Niagara. I refer to the case of the steamboat Caroline, which, while moored to the American shore, was entered in the darkness of night by a British expedition from Canada, set on fire, and pushed into the rapids to be precipitated over the cataract. Some persons on board were killed and others wounded. For this unquestionable violation of our territory there was no offer of reparation—"no atonement and no apology," as Mr. Webster expressed it, until, nearly five years afterwards, Lord Ashburton, on his special mission, expressed a regret "that some explanation and apology was not immediately made." The amiable language of the British Minister was accepted promptly by Mr. Webster, who was at the time Secretary of State, and the controversy subsided. *The steamboat had been destroyed;* but there was no offer to restore its value, nor was this question raised by our Government. (*Webster's Works, vol.* 5, *p.* 116; *vol.* 6, *pp.* 261, 300.)

(19.) The latest instance, in point of time, which it may be worth while to name in this list, is that of the Brazilian ship Santa Cruz, which, in 1850, was seized and burnt with all her papers and contents, by a British cruiser in the Brazilian waters. The excuse for the seizure was that the ship was engaged in the slave trade, and for the burning, that she was unseaworthy; but both these assertions were denied point blank by the Brazilian Government, which branded the transaction as one of "vandalism," and gave notice that it would demand an indemnity for the loss of the ship. *As the ship was destroyed, there was no question of its restitution.* But there was a formal protest against what was called "a violation of the Law of Nations by acts contrary to the dignity, the sovereignty and the independence of Brazil, a nation as sovereign and independent as England, although it may not have the power to prevent similar proceedings." (*De Cussy, tom.* 2, *p.* 369.)

(20.) There is another instance, which, though earlier in time, I have reserved for the last, on account of the authentic

declarations of an eminent British Minister bearing on the very question now in issue between Brazil and the United States. I refer to the case of the French ships burnt and captured at Lagos in 1759, within the territorial jurisdiction of Portugal. A British fleet under Admiral Boscawen falling in with an inferior French fleet, the latter took refuge near the coast. What ensued is thus described in the contemporary memoirs of Horace Walpole: "They made a running fight, but could not escape the vigilance and bravery of Boscawen. Two of their largest ships were taken; two others forced on shore and burnt, in one of which was the commander, who was wounded in both legs, and expired soon after. The action passed on the 18th August." (*Walpole's Memoirs of George III., vol.* 2, *p.* 378.) This incident took its place among the victories of the year, which, according to the lively remark of Horace Walpole in another place, were so numerous as to force him "to ask every morning what victory there was, for fear of missing one." (*Letter to Sir Horace Mann, Nov.* 30*th*, 1759.) But this victory was followed by an unexpected drawback. Pombal, a man of genius and courage, and the greatest administrator which his country has produced, was at the time Prime Minister of Portugal. He complained vehemently that the Portuguese territory had been violated, and demanded satisfaction of Great Britain according to the law of nations. (*Hautefeuille, Droits des Nations Neutres, tom.* 1, *p.* 329.) In Great Britain, Wm. Pitt, afterwards Lord Chatham, was at the head of affairs, teaching his country to be successful in war as in commerce, and filling the world with English renown. He met this question promptly. In his instructions to the British Minister at Lisbon, written before the Portuguese complaint had reached him, dated at Whitehall, Sept. 12th, 1759, and marked "most secret," he says:

"In case you shall find that any violence has actually been committed by His Majesty's ships against the immunities of the coasts of Portugal, it is the King's pleasure that you should express in the strongest terms to the Count de Oeyras [afterwards Marquis of Pombal] and to the other ministers, the extreme pain which such a most unfortunate incident must give to the King as soon as the certain knowledge of it shall reach His Majesty. . . .

"At the same time, in case there has actually been a violation of territory on our part, you will take care to avail yourself of all the circumstances of extenuation of a nature to soften the impressions which the first sense of any insult on that coast may have made. But you will be particularly attentive not to employ any favorable circumstances to justify what the Law of Nations condemns, but you will insensibly throw the same into your conversation with insinuation and address, as considerations, which it is to be hoped may prevent all asperity between two courts so mutually disposed to each other, and whose interests are so inseparable."

And the letter closes by declaring that—

"His Majesty has nothing more really at heart than to give, as far as he can with honor, to the King of Portugal all reasonable satisfaction, that one power in amity can desire from another, upon an incident so totally unforeseen and without intention of offense."

Then follows a postscript as follows:

"P. S. Though it be sufficiently implied by the above words, *all reasonable satisfaction, as far as His Majesty can with honor*, that there are things which His Majesty could not possibly on any account comply with, I have thought it may not be improper for your more certain guidance, *expressly to signify to you, that any personal mark on a great Admiral who has done so essential a service to his country, or on any one under his command, is totally inadmissible, as well as the idea of restoring the ships of war taken.* You will, therefore, in case, in your conversation with the Portuguese ministers, any suggestion pointing to either of those methods of satisfaction should be thrown out, *take especial care to say enough to shut the door entirely against any expectation of that kind;* being at the same time particularly attentive to avoid, in the manner, everything that can carry the air of peremptoriness or harshness. I am further to give you to understand, for your private information, that if the circumstances of the supposed grievance should come out to be of sufficient magnitude, such is the King's strong desire to give the most public and ostensible satisfaction to the King of Portugal, that His Majesty will not, I believe, even be averse to sending an extraordinary mission on this occasion." (*Mahon's History of England, vol.* 4, *p.* 277; *Appendix, pp.* 35–38.)

The extraordinary embassy promised in this postscript was sent to Lisbon; and here we have another letter of Mr. Pitt, dated at Whitehall, May 30, 1760, and marked "most secret." In this letter he declares anew "the King's immutable and

affectionate concern for the dignity and independency of the crown of Portugal," and enjoins upon his ambassador "to forbear entering into much controversial reasoning," and "to accompany his answer with all possible gentleness and cordiality of manner, and with the most conciliating and amicable expressions." It seems that the Portuguese Minister proposed to demand the restitution of the ships, but this was followed by "the friendly and confidential declaration, *that a compliance therewith was not expected.*" Mr. Pitt was anxious to avoid any such demand, as "an invidious use would not fail to be made of it by enemies, and perhaps by neutral powers."—*(Mahon's History, vol. 4, Appendix.)* From the Memoirs of Pombal we learn how the British ambassador acquitted himself. The glimpse there given is as follows:

"The King of England sent an ambassador extraordinary to Lisbon to give the satisfaction which was demanded. It was Lord Kinnoul who was charged with it, and who acquitted himself of this commission as the Count de Oeyras (Marquis of Pombal) required. This lord declared openly and in full audience, composed of the foreign ministers, that the English officers who burnt the French vessels on the coast of Lagos were reprehensible, and that on this account the King, his master, sent him to Lisbon, in order to testify that he had no part in it, and that it was contrary to his orders that they had committed that act of hostility for which he made reparation." *(Dezotaux Memoires sur l'Administration de Pombal, tom. 2, p. 13.)*

The ships were not restored, nor was there any indemnity therefor. But the case did not end here. In 1762 France declared war against Portugal, and, in its declaration, made the refusal to restore these ships one of the causes of war. These are the words:

"Every one knows the utmost and violent attack made by the English in 1759 on some of the [French] King's ships under the cannon of the Portuguese forts at Lagos. His Majesty demanded of the mostful faithful King to procure him restitution of those ships; but that Prince's Ministers, in contempt of what was due to the rules of justice, the laws of the sea, the sovereignty and territory of their master, (all of which were indecently violated by the most scandalous infraction of the rights of sovereigns and nations,) in answer to the repeated requisitions of the King's Ambassador on this head, made only

vague speeches with an air of indifference, that bordered on derision." *(Annual Register*, 1862, *p.* 220.)

Thus, while Great Britain was saved from the restitution of the ships, Portugal was compelled to suffer.

Such are historic precedents furnished by Great Britain to illustrate the case of the Florida. In face of this long array, it is difficult to see how British critics or British Ministers can venture to reproach us.

From a review of these instances, it will appear that, where ships have been captured in neutral waters, their restitution was at least on one occasion positively refused by a British Minister of commanding authority, while on other occasions it was avoided by the destruction of the ships. If the American commander, who undertook this business at Bahia, had done it completely, there would be little difficulty now. There were fire and water both at his service. He might have burnt the Florida or scuttled her at once, and his offence would have been no greater than now, while his Government would have been relieved from embarrassment. It is hardly cynical to say of such an omission, in the words of Talleyrand, that "it was worse than a crime—it was a blunder."

But there are peculiar circumstances in this recent instance which distinguish it from every other. They may be mentioned under two heads; but I shall only allude to them.

First. The Florida was abnormal and piratical in her origin and her career, and was little more than a lawless gypsey of the sea; born contrary to the Law of Nations, and living in constant defiance of that law.

Secondly. The Florida pretended to belong to a rebel combination of slave-masters, now engaged in rebellion for the sake of slavery. Though certain foreign powers, including Brazil, have conceded to this rebel combination what are called "belligerent rights," yet the extent of this concession is undecided. Of course, it is much less than a recognition of national independence. Every presumption must be against such a rebel combination, having such an object. The indecent haste with which "belligerent rights" were originally conceded cannot be forgotten on this occasion, nor can we neglect the well-founded argument, that, in the absence of Prize Courts belonging to the pretended power, any such concession

on the ocean was flagrantly unjust, and, when we consider its wide-spread consequences, to be reprehended always by our Government, as it must be reprehended by impartial history. Assuming that the restitution of a ship, belonging to an independent power, as to France or England, might be properly required, it does not follow that such a restitution should be required in a case like the present, where the pretended owner is not an independent power, and where the ship was lawless in origin and conduct; or in other words, that the United States should be expected to restore the Florida to Brazil to be handed over again to the support of a slaveholding rebellion, and to burn more ships.

I call attention to these considerations, without expressing any final opinion upon them. The case of Koszta, forcibly taken by an American frigate from an Austrian ship-of-war in the territorial waters of Turkey, shows how the conduct of Governments is sometimes inconsistent with strict law. An explanation and apology were promptly offered to Turkey, whose neutrality had been violated; but this was all. There was no offer on our part to surrender Koszta; nor was there any demand by Turkey for his restitution. But the present case is stronger than that of Koszta.

It is well understood, of course, that the seizure of the Florida was wrong only with respect to Brazil, and not with respect to the rebel enemy. There can be no demand, therefore, unless Brazil steps forward. Whatever is done must be in her name and at her instance. The enlightened Emperor of Brazil is of the royal house of Braganza, which reigned in Portugal, when her great Minister Pombal forbore to demand the restitution of ships captured by the British in Portuguese waters. Here is a precedent of his own family, applicable to the present occasion. I venture to add that he would do an inconsiderate and unfriendly act, if he should press the restitution of a ship, obnoxious not only as a public enemy, but as the piratical agent of a wicked rebellion. Even admitting that the capture was null by the Law of Nations. yet the nature of the reparation to be demanded rests absolutely in the discretion of Brazil, and no power in this age can be justified which exercises any discretion adverse to human freedom.

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